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In the Supreme Court

of the United States

OCTOBER TERM, 1958

NO. [redacted] 130

WILLIA NIUKKANEN, also known as WILLIAM NIUKKANEN, also known as WILLIAM ALBERT MACKIE,

Petitioner,

v.

EUGENE D. McALEXANDER, Acting District Director, District 31, Immigation and Naturalization Service,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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TEXT

Belknap, History of New Hampshire, 1912, Vol. 2 — 6

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To the Honorable, the Chief Justice of the United States, and the Honorable Associate Justices of the Supreme Court of the United States:

Petitioner, Willia Niukkanen, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on the 6th day of April, 1959.

CITATION TO OPINIONS BELOW

The oral opinion of the United States District Court for the District of Oregon was rendered on the 14th day of April, 1958, and appears at page 81 of the Record. The opinion of the United States Court of Appeals for the Ninth Circuit is dated April 6, 1959, and is unreported at this time. The opinion of the Court of Appeals is included as Appendix I to this Petition.

JURISDICTION

The judgment of the Court of Appeals was entered on April 6, 1959. A petition for rehearing was timely filed and was denied on May 19, 1959. The jurisdiction of this Court is invoked under 28 USC 1254(1).

QUESTIONS PRESENTED

Petitioner was born in Finland in 1908 and entered this country less than a year later. He has been ordered deported on the ground that he allegedly was a member of the Communist Party of the United States during the years 1937-39. His application for suspension of deportation was denied by the Board of Immigation Appeals. On a previous proceeding testing the validity of the Government's refusal to suspend deportation, whether or not there was reasonable, substantial and probative evidence that Petitioner was a member of the Communist Party within the meaning of *Galvan v. Press*, 347 U.S. 522, and whether or not the Act under

which the Government seeks to deport Petitioner, 8 USC 1251 (a) (6) (C) is a violation of the Constitution of the United States, the deportation orders were sustained. 148 Fed. Supp. 106, 241 Fed. (2d) 938, certiorari denied December 16, 1957, 355 U.S. 905, 2 Lawyers Ed. (2d) 259.

The questions presented in this Petition are:

1. Whether 8 USC 1251 (a) (6) (C) violates the Constitution of the United States by reason of

(a) being a Bill of Attainder;

(b) being an Ex Post Facto law;

(c) violating Due Process of Law; and

(d) infringing on freedom of speech.

2. Whether the Petitioner's alleged association with the Communist Party, on the record of this case, was "meaningful" and "political" within the rule of *Rowoldt v. Perfetto*, 355 U.S. 115.

STATUTES INVOLVED

8 USC 1251 (a) (6) (C), and 1252 (b) (4), insofar as relevant here, read as follows:

> Sec. 1251 (a) (6 (C): "Any alien in the United States . . . shall, upon the order of the Attorney General, be deported who . . . is or at any time has been, after entry, a member of any of the following classes of aliens:
>
> ". . . aliens who are members of or affiliated with (i) the Communist Party of the United States . . ."
>
> Sec. 1252 (b) (4): ". . . no decision of deportability shall be valid unless it is based upon reasonable, substantial and probative evidence."

STATEMENT OF THE CASE

The jurisdiction of the United States District Court for the District of Oregon was invoked under Title 28, USC, Section 2241, 62 Stat. 964, and Title 5, USC, Section 1009, 60 Stat. 237.

Petitioner* and his parents have resided in the United States since 1909 and in Portland, Oregon for about 33 years where Petitioner is a house painter.

Petitioner is the only surviving son of his parents, a brother having been killed during World War II on a ship near Wake Island (R. 172). He was drafted in 1944 and served 95 days in the Army, and received an Honorable Discharge for medical reasons (Tr. 8, 9).

On June 17, 1952, a warrant for the arrest and deportation of Petitioner was issued by the Immigation Service and was served upon him on or about September 12, 1952. In the warrant, it was alleged that Petitioner was a member of the Communist Party after entry into the United States from 1937 to 1939.

The Government's case was based upon testimony of two witnesses, Walter R. P. Wilmot and Lee Arthur Knipe. The Board of Immigration Appeals discounted the testimony of Knipe because he had lied during the hearing and at other deportation hearings by denying a prior criminal conviction in California. Wilmot admitted that at the time Petitioner was alleged to be a Communist, he himself was a very heavy drinker.

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* The transcript of the hearings before the Immigation Office will be referred to as "(Tr.)", and the record made in the District Court will be referred to as "(R.)".

Petitioner did not testify at the deportation hearing but on the hearing of his application for suspension of deportation, he denied that he was a Communist Party member at any time (Tr. 203, 204).

Besides the Constitutional questions, the issue in this case is whether the testimony of Wilmot and Knipe is (a) believable, and (b) if it is creditable, whether it establishes that Petitioner was more than a nominal member of the Communist Party and had a "meaningful association" not wholly devoid of "political implications", within the meaning of *Rowoldt v. Perfetto*, 355 U.S. 115.

REASONS FOR GRANTING THE WRIT

1. The Statute Under Which Petition was Ordered Deported is Unconstitutional.

Petitioner recognizes that the holdings of this Court in *Galvan v. Press*, 347 U.S. 522, and *Harisiades v. Shaughnessy*, 342 U.S. 580, sustained the Act in question against the contention that it is an *ex post facto* law and in violation of due process of law.

Petitioner also notes, however, that at no time has this Court passed upon the question of whether the Act is a bill of attainder. This Court, in striking down state legislation as bills of attainder in the cases of *Cummings v. Missouri*, 4 Wall. 277, and *Ex Parte Garland*, 4 Wall. 333, define the character and purpose of a bill of attainder and the nature of the evil enjoined by the Constitution.